

ESTTA Tracking number: **ESTTA253025**Filing date: **12/04/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Pioneer Family Brands, Inc.		
Entity	Corporation	Citizenship	Utah
Address	12674 South Pony Express Rd., #1 Draper, UT 84020 UNITED STATES		

Attorney information	Peter M. de Jonge Thorpe North and Western, LLP. P.O. Box 1219 Sandy, UT 84091-1219 UNITED STATES murphy@tnw.com, barracclough@tnw.com, dejonge@tnw.com, docket@tnw.com, connor@tnw.com Phone:801-566-6633
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**Applicant Information**

Application No	77329997	Publication date	11/11/2008
Opposition Filing Date	12/04/2008	Opposition Period Ends	12/11/2008
Applicant	Tropical Snowball, Incorporated #205 8633 West Knoll Drive West Hollywood, CA 90069 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030.

All goods and services in the class are opposed, namely: Shaved ice and shaved ice based desserts combined with fruit, nuts, cereal, candy, cookies, ice cream, and soy based products; frozen yogurt and frozen yogurt desserts combined with nuts, cereal, fruit, candy and shaved ice; ice cream; beverages made of coffee; beverages made of tea; chocolate food beverages not being dairy-based or vegetable based; cocoa beverages with milk; coffee flavored syrup used in making food beverages; coffee-based beverage containing milk; flavorings for beverages; grain-based beverages; grain-based food beverages; herbal food beverages; mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages; prepared cocoa and cocoa-based beverages; prepared coffee and coffee-based beverages; tea-based beverages with fruit flavoring; and candy

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration	1359508	Application Date	12/13/1984
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No.			
Registration Date	09/10/1985	Foreign Priority Date	NONE
Word Mark	TROPICAL SNO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1983/06/00 First Use In Commerce: 1983/06/00 FLAVORED SHAVED ICE AND FLAVORINGS FOR SHAVED ICE		

Attachments	1359508.PDF ( 6 pages )(92746 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/petermdejonge/
Name	Peter M. de Jonge
Date	12/04/2008

Peter M. de Jonge  
J. Abby Barraclough  
THORPE NORTH & WESTERN, LLP  
8180 South 700 East, Suite 350  
Sandy, Utah 84070  
Telephone: (801) 566-6633  
Facsimile: (801) 566-0750

Attorneys for Pioneer Family Brands, Inc.  
Registered Marks: TROPICAL SNO in Class 30  
U.S. Trademark Registration No. 1359508

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Pioneer Family Brands, Inc.,  Petitioner,  v.  Tropical Snowball,  Applicant.	Opposition No. _____
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**Notice of Opposition**

Pioneer Family Brands, Inc. (hereinafter "Petitioner"), a corporation duly organized and existing under the laws of the state of Utah and having its principal place of business at 12674 South Pony Express Road, #1, Draper, Utah 84020, believes it will be damaged by registration of U.S. Trademark Application No. 77/329,997, filed by Applicant, Tropical Snowball, (hereinafter "Applicant"), a corporation organized and existing under the laws of the State of California, with a principal place of business at 8633 W. Knoll Dr. Apt. 205, West Hollywood, CA 90069-4165, and hereby opposes the same.

As grounds for this opposition, Petitioner alleges as follows:

1. Applicant has filed in the U.S. Patent and Trademark Office Application Serial No. 77/329,997 for the mark TROPICAL SNOWBALL based on an intent to use the mark in connection with “shaved ice and shaved ice based desserts combined with fruit, nuts, cereal, candy, cookies, ice cream, and soy based products; frozen yogurt and frozen yogurt desserts combined with nuts, cereal, fruit, candy and shaved ice; ice cream; beverages made of coffee; beverages made of tea; chocolate food beverages not being dairy-based or vegetable based; cocoa beverages with milk; coffee flavored syrup used in making food beverages; coffee based beverage containing milk; flavorings for beverages; grain based beverages; grain based food beverages; herbal food beverages; mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages; prepared cocoa and cocoa-based beverages; prepared coffee and coffee-based beverages; tea-based beverages with fruit flavoring; and candy” (hereinafter “’997 App.”).

2. Opposer is the recorded owner of Trademark Registration No. 1,359,508 (hereinafter “’508 Reg.”) for the mark TROPICAL SNO for use in connection with “flavored shaved ice and flavorings for shaved ice”

3. Opposer, through its predecessor, has been using the TROPICAL SNO mark, as identified in the ’508 Reg. since at least as early as June 1983, and has been using the mark in commerce since at least as early as June 1983.

4. Upon information and belief, Applicant’s has not started using the mark TROPICAL SNOWBALL.

5. Upon information and belief, Applicant cannot show a date of first use for its TROPICAL SNOWBALL trademark prior to June 1983.

6. Upon information and belief, Opposer has priority of use of the TROPICAL SNO trademark over the earliest date of first use that can be shown by Applicant for the TROPICAL SNOWBALL trademark.

7. Applicant's mark, TROPICAL SNOWBALL, as identified in the '997 App. is confusingly similar to Opposer's TROPICAL SNO mark, as identified in the '508 Reg.

8. The goods identified in the '997 App. are similar to the goods identified in the '508 Reg.

9. Applicant's mark, TROPICAL SNOWBALL, is confusingly similar to Opposer's TROPICAL SNO mark.

10. Upon information and belief Applicant's services are or will be offered by Applicant in connection with Applicant's mark to the same or a similar class of purchasers and prospective purchasers as are Opposer's goods offered in connection with Opposer's mark.

11. Upon information and belief, Applicant's goods are or will be offered by Applicant in connection with Applicant's mark in similar channels of commerce as are Opposer's goods offered in connection with Opposer's mark.

12. Purchasers and prospective purchasers of Opposer's goods, if offered in connection with Opposer's mark, would be likely to be confused as to the source of Opposer's goods in view of Applicant's mark.

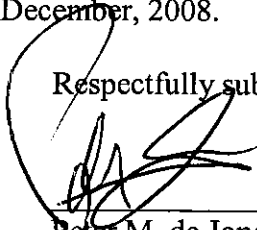
13. As a result of the confusing similarity between Applicant's mark and Opposer's mark, and because there is similarity between the goods of Applicant and Opposer, and because Applicant's and Opposer's goods are in similar channels of

commerce and are directed to similar customers, registration of the TROPICAL SNOWBALL mark in the '997 App. is likely to cause confusion or is likely to deceive purchasers and prospective purchasers as to the source or sponsorship of such goods.

WHEREFORE, Opposer prays that registration of the '997 App. be denied and that this Notice of Opposition be sustained in favor of Opposer.

DATED this 3<sup>rd</sup> day of December, 2008.

Respectfully submitted,

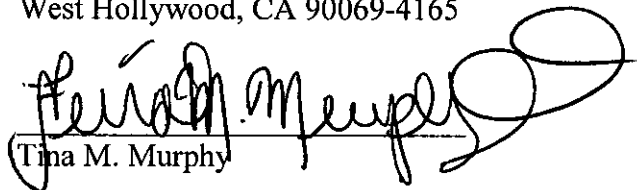


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4<sup>th</sup> day of December, 2008, I caused a true and correct copy of the foregoing Notice of Opposition to be delivered via first class mail, postage prepaid, addressed to the following named person(s):

Tropical Snowball  
8633 W. Knoll Dr. Apt. 205  
West Hollywood, CA 90069-4165

  
Tina M. Murphy